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Attorneys for Plaintiff CARL EMPY,
as an individual and on behalf of all employees
similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CARL EMPY, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

24 WINDWARD AVENUE LLC, a
California Limited Liability Company; and
DOES 1 through 10, inclusive,

Defendants

Case No.: 23STCV18608

[Assigned for all purposes to Hon. Lynne M.
Hobbs, Dept. 61]

**DECLARATION OF LILIT TUNYAN IN
SUPPORT OF PLAINTIFF'S MOTION FOR
AN ORDER APPROVING SETTLEMENT
OF CLAIMS BROUGHT PURSUANT TO
THE PRIVATE ATTORNEY GENERAL'S
ACT OF 2004**

Reservation ID: 456611727168

Date: July 24, 2024

Time: 10 a.m.

Courtroom: Dept. 61

Judge: Hon. Lynne M. Hobbs

Action Filed: August 7, 2023

Trial Date: Not Set

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1. I am admitted, in good standing, to practice as an attorney in the State of California, the United States District Courts for the Central, Eastern, Southern and Northern Districts of California. I am the founding partner at the law firm of Tunyan Law, APC. I am a fully qualified, adult resident of the State of California, and, if called as a witness herein, I would testify truthfully to the matters set forth herein. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true. I am one of the attorneys of record for Plaintiff CARL EMPY (“Plaintiff”).

BACKGROUND

4. Defendant operates a restaurant entitled Belles Beach House in California.

6. Plaintiff worked for Defendant in California during the PAGA Period.

7. On June 1, 2023, Plaintiff's Counsel sent a letter to the LWDA on behalf of Plaintiff, in compliance with California Labor Code § 2699.3. More than 65 days passed after the letter was sent to the LWDA, and the LWDA did not indicate that it intended to investigate the alleged violations

1 referenced in the letter.

2 8. On August 7, 2023, Plaintiff filed a complaint seeking civil penalties under the Private
3 Attorneys General Act of 2004, California Labor Code §§ 2698 et seq. (“PAGA”) stemming from
4 alleged wage and hour claims against Defendant (“Complaint”) in the Superior Court of California, Los
5 Angeles County entitled *Empy v. 24 Windward Ave LLC*, Case No. 23STCV18608 (the “Lawsuit”).
6 After exchanging documents and voluminous data prior to mediation, Plaintiff and Defendant reached a
7 proposed settlement that will resolve the PAGA claims pending in this action and Plaintiff’s individual
8 claims.

9 9. Defendant denies all liability and admit to no claim by virtue of its agreement to settle.
10 Plaintiff and Plaintiff’s Counsel have also taken into account the uncertainty and risk of the outcome of
11 further litigation, and the difficulties and delays inherent in such litigation, including those involved in
12 PAGA claim representative adjudication. Plaintiff and Plaintiff’s Counsel further recognize the burdens
13 of proof necessary to establish liability for the claims asserted in the lawsuit, Defendant’s defenses, and
14 the difficulties in establishing entitlement to monetary recovery. Plaintiff and Plaintiff’s Counsel have
15 also considered the Parties’ settlement discussions, as well as the evaluations of the mediator, who is
16 experienced and well-regarded in complex labor and employment matters.

17 10. Because Court approval of a PAGA settlement is required, this settlement is presented to this
18 Court for review and approval.

19 11. Counsel for Plaintiff has thoroughly investigated the facts relating to the claims alleged in the
20 operative complaint and have made a thorough study of the legal principles applicable to the claims
21 asserted against Defendant. Based on their investigation and evaluation of this case, Plaintiff’s Counsel
22 have concluded that the settlement is fair, reasonable, and adequate in light of all known facts and
23 circumstances, including the defenses asserted by Defendant, potential adverse findings regarding
24 liability, and numerous potential appellate issues.

25 12. The Parties agreed to participate in a mediation in an effort to resolve the PAGA claims
26 asserted in this matter. The Parties selected mediator Brandon Coen, Esq., a neutral with extensive
27 experience litigating and mediating wage and hour class and representative actions. The Parties
28 participated in a full-day mediation on April 11, 2024. They have not reached a settlement on the

1 mediation day but continued settlement negotiations with the assistance of the mediator and reached a
2 settlement shortly after the mediation. The Parties then spent many weeks thereafter negotiating the
3 detailed terms of the Settlement memorialized in a long-form agreement to resolve this matter.

4 13. Prior to the mediation, Plaintiff requested substantial data from Defendant, and Defendant
5 provided requested data. Prior to and during the mediation, the Parties exchanged extensive information
6 and engaged in discussions regarding their evaluations of the case and various aspects of the case,
7 including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding
8 with representative adjudication, the law relating to off-the-clock theory, meal and rest periods, PAGA
9 representative actions, and wage-and-hour law and enforcement, as well as the evidence produced and
10 analyzed, and the possibility of appeals, among other things. Plaintiff's Counsel conducted significant
11 investigation and informal discovery regarding the facts of the case, including and not limited to, the
12 exchange, review, and analysis of a large volume of documents and data obtained from Defendant,
13 Plaintiff, and other sources. The volume of data and documents that Plaintiff's Counsel reviewed and
14 analyzed included and was not limited to Plaintiff and Aggrieved Employees' employment records, a
15 detailed sampling of Aggrieved Employees' time and pay data, Defendant's Employee Handbook,
16 employment practices, procedures, and policies including, but not limited to Defendant's expenses
17 policy, meal and rest periods policy, work time policy, overtime policy, pay periods and pay days policy,
18 among other information and documents. Counsel for the Parties also met and conferred on numerous
19 occasions, e.g., to discuss issues relating to the production of documents and data prior to the mediation.
20 Plaintiff's Counsel also drafted the pleading and the mediation brief and prepared for and attended court
21 proceedings, mediation, and settlement negotiations, among other tasks.

22 14. Counsel for the Parties have also invested time researching and investigating the applicable
23 law, which is constantly evolving as it relates to representative PAGA claims, off-the-clock theory, meal
24 and rest periods, wage-and-hour law and enforcement, Plaintiff's claims and damages, and Defendant's
25 defenses thereto, as well as facts discovered.

26 15. Based on Plaintiff's Counsel's analysis, the result achieved in this litigation is fair, adequate,
27 and reasonable. Based on investigation and information discovered, Plaintiff's Counsel believes that
28 there is sufficient evidence to support the allegations made in the lawsuit, including the allegations that

Defendant, with respect to Plaintiff and the Aggrieved Employees, *inter alia*, failed to properly pay overtime wages, failed to provide compliant meal and rest periods and to pay associated premium pay, failed to timely pay wages during employment and upon termination of employment, failed to provide compliant wage statements, failed to maintain requisite payroll records, and failed to reimburse necessary business expenses, and thereby engaged in conduct giving rise to civil penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, et seq.). As a result of alleged uniform practices, Plaintiff claims that Aggrieved Employees were not paid all of the compensation that was owed to them by Defendant. Thus, in Plaintiff's Counsel's view, it is clear that the outcome of this litigation would be determined by Defendant's uniform operations and employment practices, policies, and procedures that Plaintiff alleges applied across Defendant's hourly-paid or non-exempt employees in California during the PAGA period.

SUMMARY OF THE SETTLEMENT TERMS

16. Key provisions of the proposed settlement include the following:

- (a) The Aggrieved Employees: The Aggrieved Employees (also known as the "PAGA Members") are: "All non-exempt or hourly employees of Defendant who worked for Defendant in the State of California from June 1, 2022 through the date of entry of order for PAGA settlement approval of the Settlement or modified under Section 8 of the Agreement ("PAGA Period")." It is estimated that there are approximately 5,546 pay periods from June 1, 2022 through April 11, 2024. (Agreement, ¶ 1.4, 1.19, 4.1.)
- (b) No Reversion: The Settlement is **non-reversionary**. (Agreement, ¶ 3.1.)
- (c) Gross Settlement Amount: Defendant agrees to pay the maximum sum of **\$70,000.00** (hereinafter referred to as the "Gross Settlement Amount" or "GSA") for settlement of the PAGA Penalties, which shall be inclusive of Individual PAGA Payments, the LWDA PAGA Payment, Plaintiff's Service Award, Plaintiff's Counsel's attorneys' fees and costs and the settlement administrator's fees. (Agreement, ¶ 1.10.)

- 1 (d) Net Settlement Amount: At least \$31,585.22 will be available for distribution to
2 the Aggrieved Employees and the LWDA. Of this amount, the LWDA will
3 receive at least \$23,688.92 under the Agreement, and Aggrieved Employees will
4 receive at least \$7,896.31. (Agreement, ¶¶ 1.15., 3.2.4)
- 5 (e) Plaintiff's Service Award: Plaintiff shall receive \$5,000.00 as a Service Award
6 for representing the PAGA group and a general release of all known and
7 unknown claims beyond PAGA claims (Agreement, ¶ 3.2.1.)
- 8 (f) Attorneys' Fees: Plaintiff's Counsel request an award of attorneys' fees in the
9 amount of \$23,333.33, which is one third of the GSA. (Agreement, ¶ 3.2.2.)
- 10 (g) Litigation Costs: Plaintiff's Counsel's litigation costs are capped to a
11 maximum amount of \$9,000.00. The actual costs are \$6,731.45 which include
12 the future costs of motion, final report and Case Management Conference
13 statement filing fees. Therefore, Plaintiff requests \$6,731.45 for litigation costs.
14 (Agreement, ¶¶ 3.2.2.)
- 15 (h) Settlement Administration: Payment to Aggrieved Employees and administration
16 will be accomplished through third-party settlement administrator ILYM Group,
17 Inc., which has agreed to perform Administrator duties for a flat not to exceed fee
18 of \$3,350.00, which is reasonable, based on all of the services offered.
19 (Agreement, ¶ 3.2.3.)
- 20 (i) Uncashed Checks: Funds represented by checks returned as undeliverable after a
21 re-mailing, and funds represented by checks remaining un-cashed for more than
22 180 days after issuance, will be tendered to the Unclaimed Property Fund in the
23 name of the Aggrieved Employee. (Agreement, ¶ 4.4.3.)
- 24 (j) Release: In exchange for the above settlement consideration, Defendant shall be
25 entitled to a release from the LWDA and each and every Aggrieved Employee,
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including Plaintiff.¹ (Agreement, ¶¶ 5.1-5.2.)

- (k) Notice to LWDA: The Declaration of Lilit Tunyan confirms that notice was provided to the LWDA and attaches the confirmatory submission documents. (Tunyan Decl., ¶ 46 and Exh. 3.)

17. A true and correct copy of the PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE is attached hereto as **Exhibit “1.”**

THE SETTLEMENT MEETS ALL THE CRITERIA FOR APPROVAL

18. Plaintiff and Plaintiff’s counsel have diligently investigated the claim in this matter. Plaintiff and Counsel concluded, after taking into account the disputed factual and legal issues involved in this Action, the substantial risks attending further prosecution, including risks related to the outcome of possible summary judgment efforts, and the substantial benefits to be received pursuant to the compromise and settlement of the Action as set forth in the Settlement, that settlement on the terms agreed to are in the best interest of Plaintiff and the Aggrieved Employees and are fair and reasonable. Plaintiff’s and Defendant’s Counsel brought to bear a great deal of experience with wage and hour actions in negotiating the settlement of this case.

19. Resolution at this time will forestall the need for additional expensive and time-consuming litigation that could very well result in an outcome less satisfactory than that proposed under this settlement. But, before any other consideration, we have agreed to this settlement because it is objectively reasonable. The potential for resolution benefits the aggrieved employees and the State of California, since they do not have to wait additional years for a similar recovery. The efficiency of this litigation benefits the Court, the parties and their counsel. A settled resolution now is the most realistic method for addressing the claims raised in this matter.

20. We have engaged in the necessary investigation in this case that made it possible for us to exercise informed judgment in those aspects of the settlement process in which we were involved. The Defendant in this matter produced important information, including policies and time data, and discloses

¹ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that “with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act....”).

1 key legal defenses it intended to rely upon. The information was sufficient to permit Plaintiff's counsel
2 to adequately evaluate the settlement. Plaintiff had more than enough information upon which to
3 evaluate a fair and reasonable settlement amount.

4 21. Here, the expense, complexity and likely duration of future litigation was to some extent an
5 unknown. What is certain is that to adequately establish the foundational violations that would support a
6 substantial penalty award, tremendous time and expense would be invested. To adequately establish that
7 aggrieved employees experience the alleged violations, and at what frequency, most of the aggrieved
8 employees would need to be interviewed in a systematic fashion and their testimony cataloged in way
9 sufficiently meaningful to permit the submission of summary evidence at trial, such as via survey. *First*,
10 the burdensome nature of such a process would be expensive and time-consuming. *Second*, the
11 substantial risk that the Court would either substantially reduce any penalty ultimately awarded or
12 conclude that the conduct was insufficient to support a penalty award. *Third*, it would be essentially
13 impossible to formulate an objectively reliable means of summarizing testimonial experiences, other than
14 by an extraordinarily detailed survey. And formulating such a survey would have been important, since
15 frequency of violations would need to be established before any penalties could be recovered. In sum, the
16 evidence collected to date leads Plaintiff to conclude that, to the extent violations occurred, a fact which
17 Defendant dispute, some violations were **not** systematic and **not** uniform across all of Defendant's
18 employees who worked during the relevant period. Alternatively, direct testimony would have been
19 required from as many of the roughly **199** aggrieved employees as could be obtained, which would be, at
20 best, very difficult.

21 22. Defendant denies Plaintiff's claims alleged in Plaintiff's operative complaint. Plaintiff's
22 Counsel considered defense arguments, e.g., that the employer's practices, policies, and procedures
23 complied with the law, that Defendant paid Aggrieved Employees over the California minimum wage
24 for all hours worked, that employees worked off-the-clock without knowledge of a supervisor or
25 Defendant, if worked, that Defendant correctly paid overtime for all overtime hours worked, that if
26 Aggrieved Employees missed their meal or rest periods it was per their choice, that Defendant paid meal
27 premiums, that no waiting-time penalties were due because waiting time penalties only arise from
28 "willful" failure to pay wages due and owing at the time of termination or resignation, that Plaintiff and

1 Aggrieved Employees suffered no actual injury from the alleged wage statement violations and that this
2 alleged violation and the alleged recordkeeping violation are entirely derivative of the other causes of
3 action, and that a policy and practice of reimbursing employees for necessary business-related expenses
4 exists. Plaintiff's counsel also considered the low facial meal period violation rate of 10% over all pay
5 periods assessed based on sample pay and time records produced by Defendant. Plaintiff's Counsel also
6 considered the likelihood of Plaintiff's success in establishing that any of provisions of the California
7 Labor Code, on which the civil penalties under PAGA are predicated, were violated and that such
8 violations were injurious and/or warranted imposition of civil penalties. Plaintiff's Counsel also
9 considered that trial courts have wide discretion when assessing penalties under PAGA, and that it could
10 be determined that individual liability issues predominate (e.g. due to purported variation in shifts, job
11 duties, and other circumstances which could raise individualized questions of fact) and could pose
12 challenges to manageability, and the merits of Plaintiff's claims.

13 23. Plaintiff's Counsel considered information obtained through investigations and from
14 Plaintiff, as well as class data and information obtained from Defendant and other sources, and created
15 violation, damages, and penalties valuations and models prior to reaching the settlement. Based thereon,
16 Plaintiff calculated the potential value of the claims. However, the potential value of each claim assumed
17 an exposure based on the Plaintiff having proven all elements of the claims and entitlement to monetary
18 recovery, despite risks associated with demonstrating manageability, and establishing liability and any
19 underlying California Labor Code violations and damages, and significant additional costs that would
20 have to be incurred in order to certify the case and establish liability and damages. Plaintiff also faced the
21 risk of the Court finding that individualized issues predominate, such that the action is not suitable for
22 representative adjudication. While Plaintiff's Counsel disagreed with defense arguments and factual
23 contentions, Plaintiff's recognized the circumstances and realities of the case, applicable case law and
24 regulations, the costs and expenses of further litigation, and risks to recovery, and applied appropriate
25 discounts for them.

26 24. Plaintiff's Counsel are also of the opinion that because the issues here are fairly contested,
27 there is a possibility of the Court not awarding PAGA penalties even if Plaintiff prevailed on the merits
28 due to the largely discretionary nature of awarding PAGA penalties. Indeed, under Labor Code section

1 2699, subdivision (e)(2), a Court can reduce PAGA penalties “if, based on the facts and circumstances of
2 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
3 confiscatory.” (Lab. Code § 2699(e)(2).) In other words, were this matter to go to trial, any award
4 granted would be at the discretion of the Court and subject to a substantial reduction.

5 25. The Settlement provides a significant monetary benefit that falls well within “the range of an
6 acceptable settlement” under the circumstances, which is the standard on which the instant Settlement
7 must be judged. As held by the Ninth Circuit, a settlement may be fair and reasonable even where it only
8 provides a fraction of what could have been obtained at trial. With assistance from Plaintiff’s consultant,
9 we calculated the maximum plausible potential PAGA penalty exposure to be approximately
10 **\$1,038,050.00**. This Settlement of **\$70,000.00** which is about 7% of that maximum plausible exposure
11 before factoring in the many applicable risk discounts listed in Paragraphs 21-24 of this declaration, and
12 the Court’s ability to reduce the penalty at its discretion. The Settlement is also 64% of the **\$109,345.00**
13 estimate of risk-adjusted penalty recovery at this stage in the litigation, based upon a penalty-by-penalty
14 analysis, therefore the Settlement is within that range.

15 26. The Settlement is the product of arm’s-length negotiations between the Parties occurring
16 throughout the litigation. In light of the uncertainties of protracted litigation and the state of the law
17 regarding the legal positions of the Parties, the settlement amount reflects the best feasible recovery. The
18 settlement amount is, of course, a compromise figure. By necessity it took into account risks related to
19 liability, damages, and all the defenses asserted by the Defendant. Given the strong case that Defendant
20 could bring to bear, this is not an inconsequential settlement.

21 22 ESTIMATED SETTLEMENT PAYMENTS

23 27. The amount to be designated as PAGA Penalties is **\$31,585.22** which will be distributed as
24 75% (\$23,688.92) to the LWDA and 25% (\$7,896.31) to the Aggrieved Employees.

25 OTHER PENDING ACTIONS

26 28. I made reasonable inquiry, and I am not aware of any actions which assert claims similar to
27 those asserted in the above-captioned matter, on behalf of a group of individuals some or all of whom
28 would be members of the PAGA group defined in this action.

THE EXPERIENCE OF COUNSEL

29. I am a founding partner of Tunyan Law, APC and has been engaged in the practice of employment and labor law for more than four years and focused exclusively on plaintiffs' employment law and wage-and-hour class actions and more than twenty-four years in practice of law in general. I have handled hundreds of wage-related class actions.

30. Prior to establishing my own practice, I was an associate attorney at Moon & Yang, APC and Mahoney Law Group, APC. Since I was admitted to the California Bar, my practice has focused mainly on labor and employment class action lawsuits involving California and federal labor laws. Along with those firm's other attorneys I have successfully settled more than 50 class action and PAGA matters during that time span and was routinely appointed lead or co-lead class counsel in courts in California including by way of motion for class certification.

31. I received my Juris Doctorate from the State Yerevan University and my LL.M. from University of Minnesota Law School. Prior to moving to California and starting to practice law in California I practiced law in Armenia for about twenty years as a licensed attorney. I have been general counsel and head of legal department for big telecommunication and financial corporations in Armenia for the last 12 years prior to moving to California. I managed corporate legal department and corporate legal and regulatory affairs and handled complex litigation matters as well as complex transactions for many years.

32. I am a current member of the California Employment Lawyers Association (CELA) and the California Consumer Attorneys Association of Los Angeles (CAALA). I have been an active member of the State Bar of California in good standing.

33. I am experienced in prosecuting employment matters, particularly class actions, and I focused a substantial percentage of my practice on wage, hour, and working conditions violations. In addition to the present case, I represented plaintiffs and the class members and have extensively worked on many wage-and-hour class cases and have been appointed as class or PAGA counsel along with other counsel and co-counsel for wage-and-hour class action lawsuits in various counties throughout California such as: *Rocke v. Pink Chicku LLC*, Santa Clara County Superior Court, Case N23CV41357, *Galvan v. Western Sky Dairy, LLC*, Kern County Superior Court, Case N BCV-23-100992, *Oregel v. Diablo Range*

1 *Framing, Inc.*, Contra Costa County Superior Court, Case N C23-00697, *Gonzalez v. RV Retailer San*
2 *Diego, LLC, et al.*, Riverside County Superior Court, Case N CVRI2301403, *Evans, et al. v. Downtown*
3 *Women's Center*, Los Angeles County Superior Court, Case N 22STCV06578 (class certification
4 motion granted in part); *Sanchez v. Anodizing Industries, Inc.*, Los Angeles County Superior Court,
5 Case N 21STCV30722; *Godoy v. Intertrade Industries, LTD*, Orange County Superior Court, Case No.
6 30-2020-01151921-CU-OE-CXC; *Fuentes v. Actron Manufacturing Inc.*, Los Angeles Superior Court,
7 Case N 20STCV31099; *Gonzalez v. Community Health Systems, Inc.*, San Bernardino County Superior
8 Court, Case N CIVDS2015678; *Rodriguez v. Progress Lighting, Inc. et al.*, San Bernardino County
9 Superior Court, Case N CIVDS2023894; *Castillo v. Gibson Overseas, Inc.*, San Bernardino Superior
10 Court, Case N CIVDS2022537; *Mumphrey v. People's Care Northern California, Inc. et al.*, San
11 Joaquin County Superior Court, Case N STK-CV-UOE-2019-0016397; *Ochoa v. Orlando Spring*
12 *Corp*, Los Angeles Superior Court, Case N 20STCV343129; *Findley v. USC, et al.*, Los Angeles
13 Superior Court, Case N 20STCV47290; *Maldonado v. Techmer PM, LLC*, Los Angeles Superior
14 Court, Case N 20STCV21918; *Huerta v. IRS*, Los Angeles Superior Court, Case N 20STCV09163;
15 *Mata v. Marukai Corporation*; Los Angeles Superior Court, Case N 20STCV00959; *Tapia v. Home*
16 *&Body*; Orange County Superior Court, Case N 30-2020-01155185-CU-OE-CXC; *Ruvalcaba v.*
17 *Quinn Group, Inc.*, Los Angeles Superior Court, Case N 20STCV41323; *Bravo v. FIDM*, Los
18 Angeles Superior Court, Case N 19STCV25338; *Lomeli v. Plaskolite et al.*, Los Angeles Superior
19 Court, Case N 21STCV14611; *Alcantar v. Classic Salads LLC*, Santa Cruz County Superior Court,
20 Case N 21CV002309; *Casas v. Freedom Solar Services, et al.*, Los Angeles Superior Court, Case N
21 21STCV20233; *Serrano v. Barstow Community Hospital*, San Bernardino Superior Court, Case N
22 CIVDS2006967; *Lopez v. Fairway Staffing Services, et al.*, Los Angeles Superior Court, Case N
23 21STCV26640; *Linden v. Marugame Udon USA, LLC*, Los Angeles Superior Court, Case No.
24 20STCV00728; *Salter v. U.S. Reports, et al.*, Los Angeles Superior Court, Case N 19STCV30384;
25 *Perez v. Torn & Glasser, Inc.*, Los Angeles Superior Court, Case N 21STCV43614; *Gomez v. Arya*
26 *Ice Cream Distributing Co., Inc*, Los Angeles Superior Court, Case N 21STCV31170; *Herrera v.*
27 *Coastal Construction & Lumber*, Santa Cruz County Superior Court, Case N 22CV394683; *Garcia*
28 *v. San Jose Water Company*, Santa Clara County Superior Court, Case No. 22CV396328; *Ramirez v.*

1 *Partners Personnel Management Services LLC*, Los Angeles Superior Court, Case N
2 21STCV31253; *Ramirez v. Merrill Gardens LLC*, Eastern District Court of California, Case N1:22-
3 cv-00542-DAD-SAB; *Garcia v. Tri-Valley Plastering, Inc.*, Fresno County Superior Court, Case N
4 22CECG00591; *Garcia v. South Valley Companies, Inc.*, Kern County Superior Court, Case N
5 BCV-22-100465; *Morales v. Wiseguys Custom Home Theater, LLC*, San Diego Superior Court, Case
6 N37-2019-00070151-CU-OE-CTL.

7 34. Artur Tunyan is another partner and attorney at Tunyan Law, APC. He received his Juris
8 Doctorate from the State Yerevan University and his LL.M. from the American University of
9 Armenia and University of Illinois Chicago, School of Law. Prior to moving to California and
10 starting to practice law in California he practiced law in Armenia for about twenty-five years. He
11 oversaw international donor-funded projects for the judiciary and managed public-private
12 partnership initiatives in sectors such as energy, banking, finance, and aviation. He managed
13 complex transactions and litigation matters for many years.

14 REASONABLENESS OF THE REQUESTED FEE AWARD

15 35. When this case was taken on a contingent fee basis, with the firm agreeing to assume
16 responsibility for litigation costs, the ultimate result was far from certain. In the course of this litigation,
17 Tunyan Law, APC, paid filing fees, copy charges, expert fees, mediation fees, mailing, telephone and
18 express mail charges. There was never a guarantee that Tunyan Law, APC would recoup those
19 expenditures. The firm took on this case, which necessarily required the firm to forego other
20 opportunities, given finite resources to devote to cases.

21 36. Because of the uncertainty of the outcome in this and other wage and hour litigation
22 undertaken by Tunyan Law, APC, we took this case with the expectation that a risk enhancement, either
23 in the form of a lodestar multiplier or a percentage of the fund award equivalent thereto, would be
24 available if we prevailed. This expectation stems from the fact that many cases we undertake as putative
25 class actions do not resolve successfully.

26 37. Counsel's experience in employment class actions was integral in evaluating strengths and
27 weaknesses of the case against Defendant and the reasonableness of the settlement. Practice in the
28 narrow fields of wage and hour litigation requires skill and knowledge concerning the rapidly evolving

substantive law (state and federal), as well as the procedural law of class action litigation.

38. In the past four years, I have settled many wage-and-hour class actions. Just as the Court in *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) observed, it has been my experience, that attorney fee awards of one-third of a common settlement fund are the rule, rather than the exception. Here, PAGA group Counsel agrees that they will seek no more than one third of the settlement amount in fees. This is consistent with common practice, consistent with Ninth Circuit practice, consistent with California law approving the percentage of the fund method to award fees from a common fund, *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016), and not inappropriate in light of the many hours expended by attorneys performing work for Plaintiff before and after the filing of this matter. That work includes:

- (a) Numerous interviews with Plaintiff and review of documents provided by Plaintiff;
- (b) Legal research and investigation regarding the Defendant's practices at numerous points in the litigation;
- (c) Preparation of multiple drafts of the original complaints and finalization and filing of the original complaint;
- (d) Extensive "meet and confer" efforts with Defendant's counsel to obtain relevant documents and information through informal discovery;
- (e) Drafting and amending the LWDA Notice letter;
- (f) Drafting statements and stipulations;
- (g) Review of payroll, job position, and time data;
- (h) Analysis of the audit results and preparation of a damages model with the aid of a statistics expert;
- (i) Review and revisions to the damage model and supporting data analysis;
- (j) Research and preparation of Plaintiff's mediation brief;
- (k) Attendance at mediation;
- (l) Drafting, negotiating, and reviewing multiple drafts of the Agreement and attachments;
- (m) Preparation of the motion for settlement approval; and,

(n) Review of edits to the motion for settlement approval and revisions to all documents to conform.

39. The actual lodestar incurred by Plaintiff's counsel is approximately **\$73,697.50** to date (and estimated to be **\$75,947.50**). The breakdown of work by attorney is as follows:

Attorney	Time	Rate	Total
Lilit Tunyan	118.1	\$550	\$64,955.00
Artur Tunyan	4.6	\$450	\$2,070.00
	122.7	Total:	\$67,025.00

40. I also anticipate that we will spend an additional 5 hours on this matter, appearing at the hearing of this Motion, working with the administrator to process the Settlement, and preparing final accounting filings after distribution of the Settlement, for an additional lodestar of \$2,750.00.

41. The fee request is **\$23,333.33**, which is one third of the Gross Settlement Amount, as specified in the Settlement Agreement. The requested sum of **\$23,333.33** constitutes a **negative** lodestar multiplier of 2.9, when compared to just the recorded, and estimated future lodestar of Tunyan Law, APC, totaling **\$69,775.00** (\$67,025.00 + \$2,750).

42. The Agreement also provides for the award of actual costs. Plaintiff's actual, out-of-pocket costs in taking on representation in this Lawsuit on a contingency basis are currently **\$6,731.45** which include future motion, final report and Case Management Conference Statement filing fees, as set forth in **Exhibit "2."** Therefore, Tunyan Law, APC, requests an award of **\$6,731.45** to reimburse costs incurred in bringing this action.

THE SETTLEMENT ADMINISTRATOR

43. The parties have agreed that administration will be handled by a third-party administrator. In counsel's experience as class counsel in similar wage-and-hour actions with a similar number of employees, ILYM Group, Inc. is fully capable of administering the Settlement at a competitive and reasonable cost and should be approved by the Court to administer the Settlement notice process. After obtaining competing bids from four potential settlement administrators, the Parties have agreed to retain

1 ILYM Group, Inc. ("Settlement Administrator"), which quoted the flat fee of \$3,350.00, to handle the
2 notice and settlement administration process. The Parties respectfully request that the Court appoint
3 ILYM Group, Inc. to handle these procedures and serve as the Settlement Administrator. Settlement
4 Administration Fees are currently estimated not to exceed \$3,350.00 and will be paid out of the Gross
5 Settlement Amount, subject to approval of the Court.

6 EXHIBITS

7 44. As noted above, a true and correct copy of the PRIVATE ATTORNEYS GENERAL ACT
8 SETTLEMENT AGREEMENT AND RELEASE is attached hereto as **Exhibit "1."**

9 45. Attached hereto as **Exhibit "2"** is a true and correct copy of the current expense ledger for
10 Tunyan Law, APC.

11 NOTICE WAS PROVIDED TO THE LWDA

12 46. A copy of the PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT
13 AND RELEASE was submitted to the LWDA prior to the filing of this motion. That submission is
14 attached hereto as **Exhibit "3."**

15
16 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
17 true and correct. Executed this 15th day of May 2024, at Glendale, California.

18
19
20 

21 _____
LILIT TUNYAN, "Declarant"

22
23
24
25
26
27
28

Exhibit “1”

Lilit Tunyan (SBN 329351)
ltunyan@tunyanlaw.com

Artur Tunyan (SBN 349174)
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Glendale, California 91203
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as an individual and on behalf of all employees
similarly situated

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Attorneys for Defendant 24 Windward Ave LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CARL EMPY, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

24 WINDWARD AVENUE LLC, a California
Limited Liability Company; and DOES 1
through 10, inclusive,

Defendants

Case No. 23STCV18608

[Assigned for all purposes to Hon. Gregory
Keosian, Dept. 61]

PAGA SETTLEMENT AGREEMENT

Complaint Filed: August 7, 2023
Trial: None Yet Set

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement” or “Settlement”) is made by and between Plaintiff CARL EMPY (“Plaintiff”) and Defendant 24 WINDWARD AVENUE LLC (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendant captioned *Empy v. 24 Windward Avenue LLC*, Case No. 23STCV18608, initiated on August 7, 2023 and pending in Superior Court of the State of California, County of Los Angeles.

1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.

1.4. “Aggrieved Employee” means a non-exempt or hourly employee of Defendant who worked for Defendant during the PAGA Period.

1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

1.7. “Court” means the Superior Court of California, County of Los Angeles.

1.8. “Defense Counsel” means O’HAGAN MEYER.

1.9. "Effective Date" means the date by the Court enters a Judgment on its Order Approving the PAGA Settlement..

1.10. "Gross Settlement Amount" means \$70,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, Plaintiff's Service Award, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.

1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.12. "Judgment" means the judgment entered by the Court based upon the Final Approval.

1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Plaintiff's Service Award, Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.

1.16. "PAGA Counsel" means TUNYAN LAW, APC.

1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.19. "PAGA Period" means the period from June 1, 2022 through the date of entry of order for PAGA settlement approval of the Settlement or modified under Section 8 of this Agreement.

1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.21. "PAGA Notice" means Plaintiff's June 1, 2023 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a). attached to this Agreement as **Exhibit A.**

1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.

1.23. "Plaintiff" means Carl Empey, the named plaintiff in the Action.

1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.

1.25. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

1.26. "Released Parties" means Defendant and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

1.27. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.28. "Defendant" means named defendant 24 Windward Avenue LLC.

2. RECITALS.

2.1. On August 7, 2023, Plaintiff brought this Action against Defendant for civil penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 et seq. ("PAGA") stemming from Defendant's failure to pay all wages due in violation of Labor Code Sections 204, 510 and 1194, including both regular and overtime wages; failure to pay sick leave and provide employees with written notice of accrued sick leave in violation of Labor Code Section 246; failure to provide meal periods or compensation in lieu thereof pursuant to

Labor Code Sections 226.7 and 512, the applicable Industrial Welfare Commission Wage Orders, and Code of Regulations, Title 8, Section 11000 et seq.; failure to provide rest periods or compensation in lieu thereof pursuant to Labor Code Sections 226.7 and 512, the applicable Industrial Welfare Commission Wage Orders, and Code of Regulations, Title 8, Section 11000 et seq.; failure to provide accurate itemized wage statements upon payment of wages pursuant to Labor Code Sections 226, subdivision (a), 1174, and 1175; failure to reimburse for necessary expenditures pursuant to Labor Code Section 2802; failure to pay wages of terminated or resigned employees pursuant to Labor Code Sections 201, 202, and 203; and failure to provide suitable seating pursuant to Labor Code § 1198 and California Code of Regulations, Title 8, Section 11070 (14).

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.5. On April 11, 2024, the Parties participated in an all-day mediation presided over by Brandon Coen, Esq., which led to this Agreement to settle the Action.

2.6. Prior to mediation, Plaintiff obtained, through informal discovery, employee and payroll data, policy documents, and additional information regarding Defendant's non-exempt, hourly employees in California, which Plaintiff's Counsel reviewed and analyzed.

2.7. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8, Defendant promises to pay Seventy Thousand Dollars and Zero Cents (\$70,000.00) and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

1 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
2 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
3 the Court in the Final Approval:

4 3.2.1. To Plaintiff: \$5,000.00 as Service Award for representing the PAGA group
5 and a general release of all known and unknown claims beyond PAGA claims. Defendant will
6 not oppose requests for Court approval of this payment.

7 3.2.2 To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33
8 1/3% which is currently estimated to be \$23,333.33 and PAGA Counsel Litigation Expenses
9 Payment of not more than \$9,000.00. Defendant will not oppose requests for Court approval of
10 these payments provided that they do not exceed these amounts. If the Court approves a PAGA
11 Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the
12 amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount.
13 Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising
14 from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel
15 Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and
16 PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes
17 full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the
18 PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies
19 Defendant, from any dispute or controversy regarding any division or sharing of any of these
20 Payments.

21 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
22 \$9,000.00 except for showing of good cause and as approved by the Court. To the extent the
23 Administration Expenses are less or the Court approves payment less than \$9,000.00, the
24 Administrator will retain the remainder in the Net Settlement Amount. ILYM Group, Inc. has
25 been selected as the Administrator, based upon its "not to exceed" bid of \$3,350.00.

26 3.2.4. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount
27 of at least \$31,585.22 to be paid from the Gross Settlement Amount, with 75% allocated to the
28 LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records, Defendant estimates there are **199** Aggrieved Employees who worked a total **5,546** of PAGA Pay Periods from June 1, 2023 through April 11, 2024.

4.2. Aggrieved Employee Data. Within thirty (30) days after the Effective Date, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

1 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
2 Settlement Amount by transmitting the funds to the Administrator no later than thirty (30) days
3 after the Effective Date.

4 4.4. Payments from the Gross Settlement Amount. Within thirty (30) days after
5 Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all
6 Individual PAGA Payments, the LWDA PAGA Payment, Plaintiff's Service Award, the
7 Administration Expenses Payment, the PAGA Counsel Fees Payment, the PAGA Counsel
8 Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not
9 precede disbursement of Individual PAGA Payments.

10 4.4.1. The Administrator will issue checks for the Individual PAGA Payments
11 and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid along with
12 the Notice of PAGA Representative Action Settlement (attached hereto as **Exhibit B**). The face
13 of each check shall prominently state the date (180 days after the date of mailing) when the
14 check will be voided. The Administrator will cancel all checks not cashed by the void date.
15 Before mailing any checks, the Settlement Administrator must update the recipients' mailing
16 addresses using the National Change of Address Database.

17 4.4.2. The Administrator must conduct an Aggrieved Employee Address Search
18 for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding
19 address. Within 7 days of receiving a returned check the Administrator must re-mail checks to
20 the USPS forwarding address provided or to an address ascertained through the Aggrieved
21 Employee Address Search. The Administrator need not take further steps to deliver checks to
22 Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator
23 shall promptly send a replacement check to any Aggrieved Employee whose original check was
24 lost or misplaced, requested by the Aggrieved Employee prior to the void date.

25 4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is
26 uncashed and cancelled after the void date, the Administrator shall transmit the funds represented
27 by such checks to the California Controller's Unclaimed Property Fund in the name of the
28 Aggrieved Employee.

4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS.

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and Plaintiff receives his Service Award, Plaintiff will release claims against all Released Parties as follows:

5.1 Plaintiff's Release.

5.1.1 Scope of Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff also provides a general release of all claims of any nature whatsoever, known or unknown, suspected or unsuspected, including, but not limited to any and all claims under the California Labor Code, failure to pay wages, waiting time penalties, reimbursement of business expenses, failure to provide notice of sick leave, disability discrimination, failure to make reasonable accommodation, failure to engage in the interactive process, Title VII of the Civil Rights Act of 1964, the Equal Pay Act, California Unfair Business Act, the Americans with Disabilities Act, the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, and other federal, state or local employment practices, legislation or regulation, or under federal or state common law, including retaliation, harassment, wrongful termination or breach of express or implied contract or against public policy. Plaintiff's Release does not apply to: (i) claims or actions to enforce PAGA Settlement Agreement; (ii) claims premised upon vested

rights Plaintiff may have under Defendant's ERISA-covered employee benefit plans; and (iii) claims that controlling law clearly states may not be released by private settlement, such as claims for unemployment benefits, state-sponsored disability benefits, social security benefits, or workers' compensation benefits. With the exception of Plaintiff, who provides a general release of all claims, this settlement shall not impact Aggrieved Employees' ability to assert claims other than the PAGA claims being released by this Settlement.

5.1.2 Plaintiff's Waiver of Rights Under California Civil Code § 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.2 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice ("Released Claims").

6. MOTION OR STIPULATION FOR APPROVAL OF SETTLEMENT.

The Parties agree to jointly prepare and file a stipulation or motion for approval of this Settlement.

6.1. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data

1 breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential
2 conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any
3 financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed
4 declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all
5 necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)),
6 Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code
7 section 2699, subd. (1)(2)); and (iv) all facts relevant to any actual or potential conflict of interest
8 with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA
9 counsel shall aver that they are not aware of any other pending matter or action asserting claims
10 that will be extinguished or adversely affected by the Settlement.

11 6.2. Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly
12 responsible for expeditiously finalizing and filing the stipulation or motion for approval of this
13 Settlement no later than thirty (30) days after the full execution of this Agreement and, if
14 necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in
15 favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary
16 Approval to the Administrator.

17 6.3. Duty to Cooperate. In case the court does not approve \$5,000.00 as a Service
18 Award to Plaintiff, the Parties agree to cooperate in good faith to expeditiously amend the
19 Settlement Agreement to exclude the Service Award from the Gross Settlement Amount and to
20 enter into a separate individual settlement and release agreement between Plaintiff and
21 Defendant to pay \$5,000.00 to Plaintiff as a consideration for general release of all his claims. In
22 no case the total amount of settlement paid by Defendant will exceed \$70,000.00 except as
23 provided in Paragraph 8. If the Parties disagree on any aspect of the proposed stipulation or
24 motion for approval of this Settlement and/or the supporting declarations and documents, PAGA
25 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
26 meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court
27 does not grant the motion for approval of this Settlement or conditions its approval on any
28 material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously

work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

7.4. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE

As of the date of mediation, there are 199 Aggrieved Employees who worked 5,546 Pay Periods from June 1, 2022 through the date of entry of order for PAGA settlement approval. The settlement as negotiated contemplates a PAGA Pay Period count through court approval. If the number of actual PAGA pay periods during the PAGA period exceeds 10% of the estimated pay periods (i.e., exceeds 6,100 pay periods), Defendant shall increase the Gross Settlement Amount by a pro-rata dollar value equal to the number of pay periods in excess of 6,100 pay periods. For example, if there is a 1% increase over 10% then the Gross Settlement Amount increases by 1%. However, if the escalator clause is triggered, Defendant may alternatively choose to end the PAGA Period on the date that the increase would otherwise be triggered.

///

1 **9. CONTINUING JURISDICTION OF THE COURT.**

2 The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the
3 Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or
4 Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-
5 Judgment matters as are permitted by law.

6 9.1. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
7 conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and
8 PAGA Counsel Litigation Expenses Payment and Plaintiff's Service Award or general release
9 payment, the Parties, their respective counsel waive all rights to appeal from the Judgment,
10 including all rights to post-judgment and appellate proceedings, the right to file motions to
11 vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal
12 does not include any waiver of the right to oppose such motions, writs or appeals. If another
13 party appeals the Judgment, the Parties' obligations to perform under this Agreement will be
14 suspended until such time as the appeal is finally resolved and the Judgment becomes final,
15 except as to matters that do not affect the amount of the Net Settlement Amount.

16 **10. ADDITIONAL PROVISIONS.**

17 10.1. No Admission of Liability or Representative Manageability for Other Purposes.
18 This Agreement represents a compromise and settlement of highly disputed claims. Nothing in
19 this Agreement is intended or should be construed as an admission by Defendant that any of the
20 allegations in the Operative Complaint have merit or that Defendant have any liability for any
21 claims asserted; nor should it be intended or construed as an admission by Plaintiff that
22 Defendant' defenses in the Action have merit. The Parties agree that representative treatment is
23 for purposes of this Settlement only. If, for any reason the Court does not approve this
24 Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff
25 reserves the right to contest Defendant's defenses. The Settlement, this Agreement and Parties'
26 willingness to settle the Action will have no bearing on, and will not be admissible in connection
27 with, any litigation (except for proceedings to enforce or effectuate the Settlement and this
28 Agreement).

1 10.2. Integrated Agreement. Upon execution by all Parties and their counsel, this
2 Agreement together with its attached exhibits shall constitute the entire agreement between the
3 Parties relating to the Settlement, superseding any and all oral representations, warranties,
4 covenants, or inducements made to or by any Party.

5 10.3. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant
6 and represent that they are authorized by Plaintiff and Defendant, respectively, to take all
7 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
8 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
9 terms of this Agreement including any amendments to this Agreement.

10 10.4. Cooperation. The Parties and their counsel will cooperate with each other and use
11 their best efforts, in good faith, to implement the Settlement by, among other things, modifying
12 the Settlement Agreement, submitting supplemental evidence and supplementing points and
13 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
14 or content of any document necessary to implement the Settlement, or on any modification of the
15 Agreement that may become necessary to implement the Settlement, the Parties will seek the
16 assistance of a mediator and/or the Court for resolution.

17 10.5. No Prior Assignments. The Parties separately represent and warrant that they have
18 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
19 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
20 action, or right released and discharged by the Party in this Settlement.

21 10.6. No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel
22 are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be
23 relied upon as such within the meaning of United States Treasury Department Circular 230 (31
24 CFR Part 10, as amended) or otherwise.

25 10.7. Modification of Agreement. This Agreement, and all parts of it, may be amended,
26 modified, changed, or waived only by an express written instrument signed by all Parties or their
27 representatives, and approved by the Court.
28

1 10.8. Agreement Binding on Successors. This Agreement will be binding upon, and
2 inure to the benefit of, the successors of each of the Parties.

3 10.9. Applicable Law. All terms and conditions of this Agreement and its exhibits will
4 be governed by and interpreted according to the internal laws of the state of California, without
5 regard to conflict of law principles.

6 10.10. Cooperation in Drafting. The Parties have cooperated in the drafting and
7 preparation of this Agreement. This Agreement will not be construed against any Party on the
8 basis that the Party was the drafter or participated in the drafting.

9 10.11. Confidentiality. To the extent permitted by law, all agreements made, and orders
10 entered during Action and in this Agreement relating to the confidentiality of information shall
11 survive the execution of this Agreement.

12 10.12. Use and Return of Aggrieved Employee Data. Information provided to PAGA
13 Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data
14 provided to PAGA Counsel by Defendant in connection with the mediation, other settlement
15 negotiations, or in connection with the Settlement, may be used only with respect to this
16 Settlement, and no other purpose, and may not be used in any way that violates any existing
17 contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator
18 discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and
19 electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the
20 Administrator's payment of all Settlement Funds, Defendant make a written request to PAGA
21 Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

22 10.13. Headings. The descriptive heading of any section or paragraph of this Agreement
23 is inserted for convenience of reference only and does not constitute a part of this Agreement.

24 10.14. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
25 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
26 weekend or federal legal holiday, such date or deadline shall be on the first business day
27 thereafter.
28

10.15. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:
Lilit Tunyan
ltunyan@tunyanlaw.com
Artur Tunyan
atunyan@tunyanlaw.com
TUNYAN LAW, APC
535 N Brand Blvd. Suite 285
Glendale, California 91203
Telephone: (323) 410-5050

To Defendant:
John Wu
jwu@ohaganmeyer.com
Thalia Rofos
trofos@ohaganmeyer.com
O'HAGAN MEYER
4695 MacArthur Ct., Suite 900
Newport Beach, California 92660
Telephone: (949)942-8537

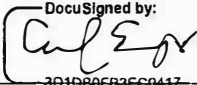
10.16. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

The Parties hereby execute this Agreement.

Dated: 5/7/2024 | 5:42 PM PDT **CARL EMPY**

By: _____

DocuSigned by:

301B80F83EC0417...

Carl Emphy

Dated: 5/13/2024

24 WINDWARD A VENUE LLC

By: _____

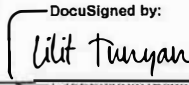


[NAME] Rob Chislett

[TITLE] Manager

Dated: 5/7/2024 | 5:42 PM PDT **TUNYAN LAW, APC**

By: _____

DocuSigned by:

C1FEE94AA91E49A...

Lilit Tunyan

Artur Tunyan

Attorneys for Plaintiff Carl Emphy

Dated: 5/13/2024

O'HAGAN MEYER

By: _____



Thalia Rofos

John D. Wu

Attorneys for Defendant 24Windward Avenue LLC

Exhibit “A”



TUNYAN LAW

Lilit Tunyan, Esq.
1336 Rossmoyne Avenue,
Glendale, CA 91207
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

June 1, 2023

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Agent for Service of Process for
24 Windward Ave LLC
Charles Lew
9440 Santa Monica Boulevard, Suite 301
Beverly Hills, California 90210

VIA CERTIFIED MAIL

Return Receipt Requested

24 Windward Ave LLC
8605 Santa Monica Boulevard, PMB 67503
West Hollywood, California 90069

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: *Empy v. 24 Windward Ave LLC dba Belles Beach House*

To Whom It May Concern:

Please be advised that my office has been retained by Carl I. Emphy ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer 24 Windward Ave LLC dba Belles Beach House ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which Plaintiff alleges Defendant engaged in with respect to Plaintiff and all of Defendant's aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of himself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a dishwasher from December 2, 2021 to June 23, 2022, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and between 8 to 12 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked including minimum wages, straight time wages and overtime wages. Throughout the statutory period, Plaintiff and

the Aggrieved Employees regularly worked more than 10-12 hours during one shift, but Defendant failed to pay Plaintiff and the Aggrieved Employees for the hours exceeding 8 hours per shift with overtime rate. Throughout the statutory period, Defendant also maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work “off-the-clock”. Plaintiff and the Aggrieved Employees would clock out and continue working an additional 15 minutes to clean the premises. Defendant’s management required to clock out and continue working not to create overtime. Additionally, Defendant required Plaintiff and the Aggrieved Employees to wash and maintain the uniforms off-the-clock without reimbursement. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiffs and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Plaintiff and the Aggrieved Employees would often times miss their meal periods, have interrupted or short meal periods. Defendant never provided second meal periods when Plaintiff and the Aggrieved Employees worked more than 10-hour shifts. Accordingly, Defendant’s policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiffs and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant did not schedule rest periods every 4 hours or a major fraction. Plaintiffs and the Aggrieved Employees have never been authorized and taken their second and third rest periods, and the first rest periods were often times interrupted or missed. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement. Defendant required Plaintiff and the Aggrieved Employees to purchase, wash and maintain the uniforms without reimbursement. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant have failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods. Additionally, Plaintiff's last day of work was on June 20, 2023. However, he was paid his final paycheck in portions on June 24, 2022 and July 1, 2022.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly

rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to state Defendant’s correct address, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked. Moreover, during some pay periods Defendant failed to state the hourly rate, the total hours worked, the pay period beginning and end date in the wage statements at all.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’ failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the

wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Provide Paid Sick Leave and Written Notice of Available Paid Sick Leave

Labor Code § 246 (a) an employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days.

Labor Code § 246 (i) requires employers to provide an employee with written notice that sets forth the amount of paid sick leave available.

During the statutory period, Defendant maintained a policy and practice of failing to provide Plaintiff and the Aggrieved Employees with the paid sick leave as well as to provide a written notice of accrued paid sick leave. On information and belief, Defendants' failure to provide an employee with written notice that sets forth the amount of paid sick leave available was not a single, isolated incident, but was instead part of Defendant's policy and practice that applied to the Aggrieved Employees.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to provide any information on accrued sick leave.

Failure to Provide Suitable Seats

Pursuant to applicable IWC Section 14(A) all working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. IWC Section 14(B) states that when employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work areas and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

However, Defendant failed to provide Plaintiff and the Aggrieved Employees with suitable seats.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements;
8. Labor Code § 204 by failing to pay all earned wages two times per month;
9. Labor Code § 246 by failing to provide paid sick leave and written notice of available paid sick leave; and
10. IWC order Section 14(A) by failing to provide suitable seats.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendant or any additional facts, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Tunyan".

Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC

Exhibit “B”

Check

[DATE]

Dear [NAME]:

You are receiving this settlement payment because of a lawsuit brought by Plaintiff Carl Emphy (“Plaintiff”)—individually and on behalf of other similarly aggrieved current and former non-exempt employees of 24 Windward Avenue LLC dba “Belles Beach House” (“Defendant”) in California from June 1, 2022 through _____ (the “Aggrieved Employees”). Plaintiff, as an individual and as the representative for the State of California, sought civil penalties against his former employer, Defendant, under the Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* (commonly referred to as “PAGA”).

Defendant strongly denies these claims and denies that any penalties are owed. While recognizing the risks of further litigation and in the spirit of compromise, Defendant and Plaintiff (the “Parties”) agreed to settle the lawsuit. The settlement resolves the claims referenced above on behalf of all Aggrieved Employees.

You have been identified as a member of the Aggrieved Employees. The enclosed check is your proportional share of the PAGA settlement payment in the lawsuit entitled: *Carl Emphy, v. 24 Windward Avenue LLC*, Los Angeles Superior Court Case No. 23STCV18608. As a result of this settlement, you will be unable to bring a claim under the California Private Attorneys General Act, California Labor Code § 2698 *et seq.*, for civil penalties for any violations of the PAGA cause of action in the Complaint, all applicable California Wage Orders, and all claims or allegations outlined in Plaintiff’s PAGA notice letter to the LWDA in connection with the Action. The covered period for the released PAGA claim is from June 1, 2022 through _____. You cannot opt out of the PAGA settlement, and even if you do not cash your check, you will be bound by the release. Any unclaimed funds after the 180-day check cashing period shall be sent to the State of California Unclaimed Property Fund in your name.

This payment may be subject to federal, state, and local taxes and may be reported to the appropriate taxing authorities. Enclosed is an IRS Form 1099 for 100% of this payment. Please consult a tax advisor to determine your individual payment, if any, and reporting situation.

If you have any questions about this payment, contact the Settlement Administrator at _____.

Please do not contact the Court to obtain information about the settlement.

Regards,
Carl Emphy, v. 24 Windward Avenue LLC Settlement Administrator

Exhibit “2”

Date	Description	Rate (\$)
5/26/2023	PAGA notices certified mailing costs	18.48
6/2/2023	PAGA filing fee with LWDA	75
8/7/2023	Complaint court filing fee	454.22
8/22/2023	POS of Complaint and Summons court filing fee	7.26
8/27/2023	Complaint service to Defendant process server fee to One Legal	123.54
12/20/2023	CMC statement court filing fee	7.26
4/15/2024	CMC statement court filing fee	7.26
4/8/2024	Mediation fee to Brandon Coen	4000
5/3/2024	Economic damages expert fee	1955
	Approval motion filing fee	68.91
	CMC statement court filing fee	7.26
	Final report filing fee	7.26
Total costs		6731.45

Exhibit “3”

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

On the date indicated below, I served the document described as: **DECLARATION OF LILIT TUNYAN IN SUPPORT OF PLAINTIFF'S MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEY GENERAL'S ACT OF 2004** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

Attorneys for Defendant 24 Windward Ave LLC

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 15, 2024 at Glendale, California.

Signature